



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: OCTOBER 12, 2022

IN THE MATTER OF:

Appeal Board No. 624357

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 624357 and 624358, the claimant appeals from the decisions of the Administrative Law Judge filed May 27, 2022, insofar as they sustained the initial determinations disqualifying the claimant from receiving benefits, effective November 13, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$14,112 in regular unemployment benefits; and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$8,400 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded an opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer and the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. Further testimony and other evidence are needed to determine whether the claimant voluntarily separated from employment without good cause, and to assess the relative credibility of the parties.

Specifically, the case file includes copies of emails exchanged between the claimant and the Department Chair (Lori Solomon), between Lori Solomon and the former Department Administrator (Lorraine Scaringi-Coletta); and emails from Lori Solomon to other individuals, that are relevant to the determinations at issue. These emails were sent by the claimant as attachments to a letter to

the Department of Labor dated April 14, 2022, and the relevant pages are marked in red in the lower right hand corner as A1 through A12. Upon remand, these pages shall be received into evidence after the appropriate confrontation and opportunity for objection.

The employer is directed to produce the Department Chair, Lori Solomon, who shall testify regarding the content of these emails, specifically, but not limited to, emails she sent on February 10, 2020 and March 6, 2020, referring to the claimant as the Administrator; an email exchange between the Chair and the claimant on May 14, 2020; and an email exchange with Lorraine Scaringi-Coletta on December 17, 2019.

The claimant shall also be questioned regarding the content of these emails and the circumstances surrounding them.

Further, since the claimant has indicated on appeal that she has located a witness who will support her account, the claimant is directed to identify and produce that witness to testify at the remand hearing.

The parties are placed on notice that failure to produce the witnesses and evidence directed by the Board may lead to the hearing Judge or the Board taking an adverse inference against that party.

The hearing Judge may receive any other evidence needed to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge, insofar as it was adverse to the claimant's interests, be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of voluntary separation without good cause and the overpayment of regular and FPUC benefits, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues of voluntary separation without good cause, and the overpayment of regular and FPUC benefits, only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER